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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 06-085

#### Comments

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated January 2005.]**

#### 2. Form, Style and Placement in Administrative Code

- a. The rule should provide a table of contents for ch. ATPC 156.
- b. The use of the term “stem (rhizome)” in s. ATPC 156.01 (6) is inappropriate, as only one term should be used; however, “tuber” is the more precise term. But why not simply say “potato”?
- c. The definition of “fairly well shaped” is difficult. “Otherwise ill-formed” is as ambiguous and subjective as “fairly well shaped,” resulting in a definition that says, in essence: “‘Pretty good’ means not too bad.” However, the term is used only twice, and then alongside other equally subjective but undefined terms (e.g., “materially detracts”). It would be appropriate to omit the definition and replace the term where it appears in the rule with language parallel to other language in the rule. For example, s. ATPC 156.12 (1) (d) could be rewritten as follows: “No potatoes in the lot are ill-formed to a degree that materially detracts from the appearance of the potatoes.”
- d. To avoid circularity, definitions should not use the term being defined. In s. ATPC 156.01 (9) (a) and (b), references to “farm” should be replaced with references to “non-contiguous tract of land.”
- e. The definition of “foundation seed potatoes” is substantive, in that it explains the significance of the classification and seems to establish the requirement that only foundation seed potatoes may be used to produce certified seed potatoes. The definition, if one is needed,

should simply state that foundation seed potatoes are potatoes that the college has certified as meeting the applicable standards; the substance should be moved to the text of the rule.

f. The definition of “tuber” should be omitted. At best, the definition is unnecessary, as a standard dictionary definition is sufficient. At worst, it could be confusing or simply incorrect; for example, the tuber moth is not the potato moth, it is the tuber moth. Where “tuber” is meant to mean potato and no other tuber, “potato” should be used.

g. The note that precedes s. ATPC 156.02 (5) should be placed at the end of that subsection.

h. In s. ATPC 156.02 (6) (c), the second sentence is substantive and not an application requirement. Thus, the sentence should be moved to another place in the text of the rule.

i. The second sentence of s. ATPC 156.03 (3) (b) 1. should be placed in a note.

j. Section ATPC 156.05 (1) (b) should not include the definition of “field propagation” as the definition of that term in s. ATPC 156.01 (10) applies to the entire chapter. However, should that paragraph include a definition of “Y”?

k. Some provisions of the rule could be combined, making the overall rule shorter and clearer. In particular, the provisions regarding review of the college’s actions could be combined and placed in a subch. IV, as could the provisions regarding misrepresentations. Similarly, the provisions in subch. III regarding bulk sales and sales in bags or totes could be combined. It appears that the minor differences between the current provisions could be accommodated within combined provisions. Note that, if the department chooses not to do this, the reference in s. ATPC 156.08 (3) (b) to “this chapter” should be replaced with “this subchapter.”

l. Section ATPC 156.10 (3) (a) to (d) could be rewritten in the active voice to say, for example, “The department shall grade potatoes that meet the standards in s. ATPC 156.12 as badger state brand (or “grade”?) potatoes.” If the Department makes this change, s. ATPC 156.10 (3) (intro.) becomes unnecessary.

m. In s. ATPC 156.10 (6) (c) 2., as written with the word “and,” it is acceptable for there to be any number of off-size potatoes in a sample or for there to be any number of defective potatoes in a sample, but not more than one of each in a sample. If this is not what the department intends, it should replace “and” with “or.” Similarly, should “and” be replaced with “or” in s. ATPC 156.11 (2) (b) 1.?

#### **4. Adequacy of References to Related Statutes, Rules and Forms**

a. Section ATPC 156.03 (1) (f) 2. should refer to “subs. (3) to (5).” Also, should this reference include sub. (6)?

b. Section ATPC 156.10 (4) refers to a form. The requirements of s. 227.14 (3), Stats., should be met.

c. It appears that s. ATPC 156.12 (1) (c) 4. should refer to sub. (5), rather than sub. (4).

d. In ss. ATPC 156.14 (2) (d) and 156.15 (2) (d), each occurrence of the notation “ss.” should be replaced by the notation “s.”

**5. Clarity, Grammar, Punctuation and Use of Plain Language**

a. In s. ATPC 156.01 (34), should the definition of the term “state” include a United States territory?

b. Section ATPC 156.02 (3) (j) does not make clear what specific information relating to a variance under s. ATPC 156.03 (7) the college must include in certification documents. Does this require just a statement that there is a variance or documentation that the necessary conditions for a variance are met?

c. Section ATPC 156.02 (7) (b) should refer to “the number of planted acres from which the lot was produced.” The lot is potatoes, not acres of land. Sections ATPC 156.04 (1) and (2) are similarly imprecise.

d. In s. ATPC 156.03 (1) (f), by whom is the breeding program recognized?

e. In s. ATPC 156.03 (7) (b), “a variance” or “certification” would be more precise than “action.”

f. Section ATPC 156.06 (1), (4), and (5) should be written in the active voice, to clearly indicate to whom those requirements apply. Subsection (2) clearly applies to any person while sub. (3) applies to seed potato growers.

g. In subch. III of ch. ATPC 156, the terms “brand” and “grade” appear to be used inconsistently.

h. In ss. ATPC 156.12 (5) (b) and 156.13 (5) (b), “serious damage” should be omitted, as it is a subset of “damage.”

i. Section ATPC 156.17 reproduces all of s. ATPC 156.08, except for s. ATPC 156.08 (3) (b). Is this difference intentional?